NSW Legislative Council Hansard

SECURITY INDUSTRY AMENDMENT BILL

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, Minister for Lands, and Minister Assisting the Minister for Natural Resources) [5.08 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the *Security Industry Amendment Bill 2005*.

The Government's achievements in cleaning up the security industry are impressive, however, we need to continue our program of reforms to ensure a professional, high quality industry.

The Bill represents the third wave of reforms to the security industry, and will ensure that the NSW security industry is the most tightly regulated in Australia.

This Bill is based on the Report of the statutory *Review of the Security Industry Act 1997* and the *Security Industry Regulation 1998*, which was tabled in Parliament on 20 October 2004.

The Report made 30 recommendations for further improvements to the Security Industry including:

Expanding the licensing categories within the existing licence classes to better reflect the type of activities being undertaken by licence holders, and ensuring that guards performing specialist services have the appropriate training and qualifications.
Under the current system, the classifications cover a very large range of activities, which do not recognise that different skills are required to be properly trained to carry out each individual activity.

Under the new arrangements, every security industry employee will be required to undertake a basic level of training. But for those security activities that present a higher risk to the community, and require security personnel to possess higher levels of competence (such as armed guarding, guarding with dogs, or body guarding), additional, more specific training will be required.

By expanding the licence categories, we can also more appropriately link criminal and other exclusions to the different licence categories. This will have the effect of enforcing higher standards on those members of the industry who are performing more specialised security work, such as armed guarding.

We will also introduce a provisional licensing system. New entrants to the industry will be required to undertake a pre-licensing course, which has been developed by TAFE and approved by the Commissioner of Police. This course will provide new entrants with the critical foundation knowledge necessary to obtain a provisional licence and subsequently a job in the industry.

The provisional licensing scheme will also ensure that a new entrant to the industry has supervised on-the-job training from an appropriately qualified security employee, so he or she can learn the practical skills required to carry out their duties effectively. This on-the-job training will be assessed in the workplace, before a new entrant can be deemed eligible to apply for a full licence.

When the Commissioner relies on Police intelligence to refuse a licence application, the Bill will also protect that intelligence from being released to unsuccessful applicants if they appeal to the Administrative Decisions Tribunal.

This provision is not designed to circumvent the appeals process, or hinder the ADT or the Courts in the exercise of their review functions. These bodies will still have the same opportunity to consider and weigh the probative value of the intelligence the Commissioner relied on to make his decision.

However, the Bill will prevent the release of intelligence directly to the person to whom the intelligence relates. This will protect the safety of Police informants, and prevent the disclosure of Police information holdings and the details of Police methodology.

The Bill will ensure that applicants renewing their licences have been performing security work for a significant term of their existing licence, or have been offered future contracts within the security industry.

And at the time of re-licensing, applicants will need to demonstrate ongoing competence in the industry.

This will prevent a person from obtaining a licence, for purposes other than employment, for example, in order to access firearms.

The Bill will introduce an additional ground for refusal of a licence in circumstances where the applicant was the subject of a prescribed civil penalty imposed in the last five years.

This provision recognises that the Court system provides for a wide range of punishments following a finding of guilt that do not impose a conviction. These may nevertheless impact on a person's suitability to hold a licence. For example, a breach pursuant to the *Industrial Relations Act 1996*.

Some security licence holders are permitted to hold and store firearms in residential premises. The Bill will prevent them from storing those firearms in the place of residence of a person who has been convicted of any offence that would exclude them from holding a licence.

This provision will help keep firearms out of the hands of criminals.

Harsh penalties will apply for breach of this condition—up to $22,000 for corporations or $11,000 or six months gaol or both for individuals.

The Bill will extend the Commissioner's power to investigate applications and applicants including close associates of an applicant for a master licence.

Section 5 of the Act provides a definition of "close associate", which addresses the issue of people who may exert control or influence over a licence holder.

This provision will enable the Commissioner to investigate not only an applicant for a licence but also his or her close associates. The Commissioner may refuse to grant that licence where one or more of the applicant's close associates would be prevented from holding a security licence has they applied for one. This may be because of their criminal history or other disqualifying criteria.

The Bill will require all sub-contracts to be approved by clients and all companies involved in the contracts.

Subcontracting is a real issue for the security industry. It has lead to a number of dangerous practices including the use of unlicensed security guards, and poor training and assessment practices. This occurs because of pressure on Registered Training Organisations to process a high number of guards quickly so they can obtain conditional licences, and meet the supply needs of the industry.

This provision will allow greater scrutiny of any sub-contracting arrangements, ensure greater accountability and transparency. It will also greatly reduce the reliance on unlicensed guards in order to meet the terms of the sub-contract in the industry.

This reform will ensure that the client is aware of how services are being provided, and that providers are clearly aware of their contractual responsibilities.

I am pleased to announce that the Bill will give formal legislative recognition of the Security Industry Council as an advisory body to the Minister.

The Security Industry Council was established in 1999 to provide:

• "Coordinated advocacy to the Government of New South Wales on behalf of the security industry"; and
• "The community of New South Wales [with] a competent and credible industry providing professional security services".

The Security Industry Council has been responsible for putting in place mechanisms that have enabled a sense of cohesion between the many diverse sectors of the industry.

It has also:

• Devised a strategic plan for the industry in 2001 designed to address areas of deficiency within the industry and to rid the industry of undesirable elements;
• Developed an internal program for compliance inspections of all master licensees;
• Prepared a revised Code of Practice for the Security Industry; and
• Developed a plan for professionalising the industry and removing those undesirable elements.

In order to give the Council a more formal standing and clarify its role as the premier security industry advisory body, both police and industry submissions to the Review recommended that the Council's role be formalised in the legislation.

To achieve this, the Security Industry Council will be equipped with the appropriate expertise and skills to improve the security industry, including representatives from providers, users, government and consumers.

It will be charged with:

• Monitoring and advising on the regulation of the industry;
• Establishing and promoting industry standards;
• Conducting industry research into industry statistics and trends;
• Making recommendations of licence fees and charges;
• Monitoring performance and obligations of Approved Industry Associations;
• Reviewing legislation and making recommendations; and
• Arranging independent audits of Approved Industry Associations.

The Bill will significantly increase penalties for breaches of the Act and Regulation to bring them into line with community expectations.

The Government has introduced a stringent licensing regime to ensure that persons carrying on security activities are appropriately trained and qualified.

There are significant risks from people who were previously disqualified or ineligible for a licence operating shonky security businesses or conducting security activities. Consumers and the industry itself needs to be protected against unlicensed, untrained and undesirable people from operating as if they were legitimate security operators.

There is no room in NSW for Dodgy Brothers Security, who strap some saucepans to their car and call it an armoured vehicle.

These changes will send a clear message that breaches of the Act will not be tolerated. If you are carrying on unauthorised security activities, you will risk a maximum penalty of $110,000 for corporations or $55,000 for individuals or two years gaol or both.

Across the board, the penalties for offences under the Act have been significantly ramped up to reflect the great risk to the public that breaches may involve.

The Government introduced the Security Industry Act 1997, which commenced on 1 July 1998, to improve standards in the security industry and provide greater safety for the public, and security guards.

The Act introduced a new licensing and appeal system, largely based on an Industrial Relations Commission Inquiry into the cash-in-transit sector of the industry.

Its objective is to ensure proper accountability and integrity in the security industry. This was achieved through the introduction of stringent licensing criteria, which had the effect of excluding inappropriate persons from employment in the security industry.

Additional measures aimed at continuing and fine-tuning the reform process were introduced in late 2002. These have been successful in decreasing the risk of criminal activity within the security industry, and increasing enforcement of current licensing requirements.

The Government also tightened up controls over firearms to limit the opportunity for the security industry to be a soft target for criminals seeking access to firearms. In excess of 1000 firearms have been removed from the industry as a result of these changes.

The Government's program of security industry reforms has seen a significant change in the culture of the industry.

This Bill will ensure that the security industry continues to strive for improvement, professionalism and offer

appropriate protections to the people of NSW.

The changes will also ensure that people currently working in the industry have the skills they need to properly and safely engage in the security activities they have been licensed to undertake.

I commend the Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [5.09 p.m.]: I am pleased to contribute to the debate on the Security Industry Amendment Bill on behalf of the Opposition. The Opposition will not vote against the bill, but I will outline a number of concerns about the bill's impact on the security industry. The Australian Security Industry Association has held discussions with crossbench and Opposition members in recent days to outline its concerns about the bill. This is another case of the Government failing to adequately consult with the affected industry before introducing a bill.

In October last year the Minister tabled in this Chamber an outline of proposed reforms. However, an exposure draft bill was not distributed to the security industry until 26 May. The industry had just one week to comment on its content. Minister Scully made minimal changes to the bill, even after the Australian Security Industry Association Ltd [ASIAL] and the security industry raised concerns about some aspects of it. ASIAL supports many, if not most, of the provisions in the bill, but it is still concerned about several changes to it, including the changes to the provisional licensing system.

New licence holders undertaking class one activities, for example security guards, bodyguards and bouncers, will need to receive direct supervision from another licence holder for twelve months. ASIAL has requested us to remove the reference to direct supervision and to retain the current arrangements. ASIAL argues that direct supervision will mean that, for twelve months, provisional licence holders will need to have one-on-one contact with a full licence holder. ASIAL argues that the changes to provisional licences seem to have resulted from the idea that training alone cannot equip people with the skills to undertake their duties competently in the workplace and that public safety would therefore be compromised.

In response, the security industry argues that if people are not competent to be security guards before they start work, they really should not be there in the first place. In short, the security industry is saying, "What will 12 months of puppy walking achieve that good training cannot?" The industry also argues that the imposition of 12-month provisional licensing schemes fails to acknowledge that the security industry relies heavily on employees working outside normal business hours, which this scheme does not support. The requirement that provisional licence holders be given direct supervision will impact heavily on businesses, particularly given the implied meaning of one-on-one contact with a supervisor. The industry also believes that the outcome will result in fewer new staff.

The Howard Government's economic management of this country has resulted in a dramatic drop in unemployment, leading to fewer people wanting to become security guards even before these new restrictions apply. I refer to the impact of the cut in the number of apprentices and trainees, who, under the Apprenticeship and Trainee Act 2001, cannot work shift work or overtime, a fundamental requirement of industry due to the nature of the service provided. Employers would not be able to fund such a program. That will result in a disincentive for current businesses to expand and new businesses to come into the industry, dramatically increased wages, and a reduction in the level of services provided by the industry, leaving clients without security and placing greater reliance on police.

Proposed solutions being put forward by the industry include the removal of provisional licensing altogether or, at the very least, the removal of the reference in proposed section 29A to direct supervision, and the retention of existing arrangements. The industry is concerned also about firearms in homes. Provisions in the bill prevent licence holders who are permitted to store firearms in their homes from doing so if another resident has been convicted of an offence that would exclude him or her from holding a licence. The Coalition remains committed to ensuring that firearms do not fall into the hands of criminals and those who are not entitled to be in possession of them. We support measures that enhance the security of firearms.

I place on the record the belief of ASIAL that there must be diligence in storing firearms in residential premises. The industry has indicated that licence holders who are able to store their firearms at their place of residence have already undergone a rigorous police check, and that any changes should be managed by NSW Police and not covered in the Act. ASIAL indicated to crossbench and Opposition members that it believes that the provision will result in a major logistical problem. An undue burden of responsibility will be placed on employers—a burden beyond their control and legal capacity. It will also result in a potential loss of master licences.

A master licence holder runs the risk of losing his licence and his livelihood if a firearm is discovered on prohibited premises as a consequence of a relative or associate of his employee—who may have a prior criminal history; whether or not he or she has been convicted—staying there. That would most certainly be without the knowledge of the employer and possibly unknown even to the licensed operative. This provision is

also unenforceable. The onus of responsibility is placed on a security licensee to interrogate and deduce certain information from anyone who resides at, even temporarily, or visits the household. The bill requires all subcontracts to be approved by clients in advance.

The ASIAL acknowledges that these changes appear to be aimed at ensuring that clients know and approve of the subcontracting of services by the principal contractor and that they may reduce cost-cutting and the avoidance of paying employee entitlements. However, it believes that these changes will have the consequence of inhibiting the provision of services and quality where subcontractors are in scarce supply, for example, in regional parts of New South Wales; and that where a surge in demand occurs, usually outside business hours, it would not be possible to secure commercial or residential client consent.

This will leave clients without security coverage and it will place greater pressure on policing resources. If a client is unable to sign off in advance, for instance, at sporting or entertainment events where additional last minute manpower is needed, or for a mobile response to an alarm, the option would be referred to police. ASIAL argues that any dispute over subcontracting can be dealt with under common law or included initially in contracts. The industry has put forward several possible solutions, including removing the wording in proposed section 38A (2) and substituting the following:

The principal must ensure that in the contract for service between the principal and the client, the client be advised in writing that bona fide subcontractors may be used to provide any security activity.

A similar consequential amendment should be made to proposed section 38A (3). The industry will establish a standard subcontracting document for use by clients and master licence holders. Further, the industry will develop a contracting code of practice that will cover behaviour and compliance. The bill incorporates in legislation the Security Industry Council as an advisory body to the Minister. However, its formation is optional. The Government has a history of making consultation and co-operation optional. We saw that in the bill that was debated immediately prior to this bill.

The Security Industry Council has not met since October last year. There is little point in having an advisory body that does not meet regularly. It was not called on to consider this legislation before it was presented to Parliament. The bill requires the commissioner to refuse an application if the applicant has, within 10 years before the application, been removed or dismissed from the police force in New South Wales or any other jurisdiction, on the grounds of the applicant's integrity as a police officer. The commissioner may also refuse an application if, within 10 years of the application, the applicant was removed from NSW Police on grounds other than his or her integrity as a police officer.

We have seen in recent times, and we continue to see, officers removed from the service for matters other than their integrity. It could well be that they have neglected their duty. It might not necessarily be for misconduct as such; an inadvertent oversight might result in an officer, for whatever reason, being removed from the service. No question is raised about a person's integrity; a determination is made relating to his or her removal, on whatever grounds, from the police service.

The bill addresses the cataloguing of security firm firearms. Yesterday Government spin doctors spun hard the news that police had completed the cataloguing of firearms held by security firms. That involved test-firing 2,228 guns held by 208 security firms. Markings on bullets and cartridge cases were logged on the Integrated Ballistics Identification System [IBIS], which has now been in operation for about five years.

The Government chose to introduce the legislation yesterday and to announce that it had just completed this project. If I remember correctly, yesterday the Minister said this technology would make criminals think twice before firing a gun stolen from a security firm or security guard. In reality, an offender who fires a gun that he knows is stolen would not care less whether it is traced back to where he stole it. He would be more concerned about whether the police knew who he was. When it came to the crunch, he would not be concerned that the police would find out where the gun was stolen from. Criminals performing these sorts of crimes could not care less about the police being able to identify where a gun was stolen from. The villains will continue to use guns. Silly comments such as that reveal how out of touch the Minister is. It is a shame the Government has made no concerted effort to crack down on gun crime and step up its offensive to stop guns being stolen from security guards. It continues to happen, week in, week out, but this Government is all about spin and appearing to take action while doing nothing.

On 18 April two guns were stolen at Belfield. There was a second incident on 31 May, when security guards at a Crows Nest bank had their guns stolen during an early morning raid. The Carr Government spin-doctored the Crows Nest raid perfectly. Only agitation by the Opposition and the media prompted police media staff to reveal that the two security guards robbed in Crows Nest had been relieved of their pistols. There was no comment for about eight hours, despite media probes and Opposition calls for the Government to enlighten us. The Government talks about transparency with regard to serious crimes but that is a joke. As I indicated at the commencement of my address, the Opposition will not oppose the legislation. However, we would like to see further consultation with the industry and ask the Government to accept and act upon industry concerns. That

has not happened to date with this bill or in many other areas of the Government's reform agenda. I will not hold my breath.

Reverend the Hon. Dr GORDON MOYES [5.21 p.m.]: I lead for the Christian Democratic Party in debate on the Security Industry Amendment Bill, the purpose of which is to make myriad amendments to the Security Industry Act 1997 in order to tighten regulation of the security industry. I commend the bill but urge the Government to consider whether some of its provisions will be workable in practice. As with most legislation, there is a statutory period of review every five years or so to ensure that the legislation is keeping in line with its policy objectives and reflecting best practice. This bill is based on the ministerial report of a statutory review of the Security Industry Act 1997 and the Security Industry Regulation 1998. The report was tabled in Parliament on 20 October 2004 and made about 30 recommendations for security industry reform, most of which have been adopted in this bill.

According to the Australian Security Industry Association Ltd [ASIAL] the Minister undertook to consult with the industry further through the Security Industry Council after the statutory report was tabled. The Security Industry Council is the body responsible for providing advice to the Minister on issues that concern the security industry. However, this consultation did not take place. I understand that the Security Industry Council has not met with the Minister in recent times. It last met with the Minister in October 2004, when the statutory review report was tabled. The ASIAL has informed crossbenchers that the exposure draft of the bill was received on 26 May 2005. Comment on the bill was then invited but it was required to be submitted by 2 June 2005.

The consultation period lasted barely a week, which offered very little opportunity to the industry to make a considered contribution. In effect, ASIAL—the body that represents around 85 per cent of the security industry around Australia—had only one week in which to make any submissions with respect to the draft bill. This is not appropriate and it is not responsible government. Entities that are affected by legislation should be given sufficient time in which to consider the issues that affect them and to seek legal advice as necessary. They should be given time to consider draft legislation and to make informed submissions to the Government about their concerns with respect to that legislation. There is no way that any of that could occur in just seven days.

ASIAL has expressed some deep concerns about the bill. Membership spans small and medium-size operations and large corporate entities. I will not repeat all the ASIAL's concerns in this place as they were adequately covered by the Opposition in the Legislative Assembly. Opposition members in the other place indicated that they were unable to give proper and considered thought to ASIAL's concerns because they were not given sufficient time to address the bill. ASIAL responded:

… industry is astonished that this amendment bill is being rushed through without the opportunity for full discussion and debate with stakeholders, and seriously questions the haste.

The Christian Democratic Party concurs with ASIAL's concerns in relation to the manner in which this bill has been hastily rushed through Parliament. However, the Christian Democratic Party is in favour of legislation that tidies up this industry. Individuals employed to carry out security work—particularly those who carry firearms—are, in a sense, de facto police officers. They carry great responsibility on their shoulders. They are the vanguards of averting, responding to and mitigating danger.

Therefore, it is important that legislative measures are in place to ensure that this industry is regulated appropriately. Importantly, legislation should cater appropriately for the niche that it intends to regulate. ASIAL has highlighted concerns that the bill has some provisions that are "ill conceived, unworkable, impractical and unenforceable". If that is true, Parliament should not pass the bill. We should not be considering a bill that is ill conceived, unworkable, impractical and unenforceable. I urge the Government to monitor closely the outworking of any impractical or unenforceable provisions in this bill if and when it is passed.

The bill introduces a number of commendable provisions, most of which are unopposed by the ASIAL and are certainly not opposed by the Christian Democratic Party. The bill expands the licensing categories within the existing licence classes to reflect better the types of activities undertaken by the security industry and to ensure that guards who perform specialist services have the appropriate training and qualifications. By identifying the specific activities undertaken within the security industry and providing suitable licences to reflect those activities, individual clients will know the exact scope of responsibility that is afforded to the security agents whom they employ. Security agents will also be aware of the extent of their role. This is a commendable move on the part of the Government.

The bill introduces a provisional licensing system to ensure that all new entrants to the industry—that is, apprentices or trainees who carry on security activities in the course of their apprenticeship—are trained appropriately. Provisional licensing will apply only in relation to security activities that are covered by class 1 licences. Class 1 licences have been itemised as class P1A, P1B and so on, with each category representing a different scope of responsibility. The notion is that individuals entering the industry will have direct supervision and that, when their training is complete, they will be in a position to be considered for certain jobs. However, ASIAL has claimed that the provisional system will be unworkable. For example, the need for those in training

to have direct supervision will shackle operators of all sizes unnecessarily, but it will particularly affect small and medium businesses. Having supervisors present at all times will double the number of security guards. It may be quite impractical to supervise people on a one-on-one basis, especially in a competitive business when the bottom line counts. If the trainee is working outside normal business hours significant penalty rates must be paid, and one-on-one supervision may be impractical in those circumstances. I ask the Government to consider ASIAL's concerns closely.

The other controversial provision—I believe it is a sound objective but it may be unworkable in practice—is proposed section 23B. This proposed section contains a special condition that requires that firearms are not to be stored at residential premises that are also the residence of someone who has been found guilty of an offence that would disqualify them from holding a licence. Further, master licensees employing people as armed security guards must not cause or permit any firearm in the master licensee's possession to be stored at any prohibited premises—for example, at the principal or temporary place of residence of a person found guilty of a criminal offence. But this section raises many issues, such as visits by friends and relatives of the principal licensee and the like. For example, ASIAL pointed out that a master licence holder might run the risk of losing his licence should a firearm be discovered on premises that are prohibited because an associate of his employee who may have a criminal history—regardless of whether a conviction was recorded—is staying there. The ASIAL suggested:

... this would most certainly be without the knowledge of the employer and possibly even unknown to the licensed operative.

Importantly, the bill requires all subcontracts to be approved by clients and all companies involved in the contracts. Whether this will be viable remains to be seen. For example, it may not always be possible to secure client consent when security reinforcement is engaged outside business hours. It is envisaged that police may have to step in if the scenario arises. This poses some impracticality. The bill also provides formal legislative recognition of the Security Industry Council as an advisory body to the Minister. My understanding is that the council rarely meets and is rarely given advice—most importantly, to increase penalties for breaches of the security legislation to bring them into line with community expectations. Despite all of those difficulties, and the rush and hurry with this legislation, the Christian Democratic Party will support the Security Industry Amendment Bill because it has important objectives.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.30 p.m.]: The Australian Democrats recognise that regulation is required in the security industry. We are somewhat concerned about the increased use of security people generally—which could be an index of the need to protect people. Is the gulf between the rich and the poor increasing? Is lawlessness on the increase, presumably because, with the advent of plastic cards, less cash is being carried around? Is it because of terrorism? Security employees carry guns in circumstances where previously no guns were necessary.

I remember as a student my flatmate being involved in some skylarking as part of commemoration day to celebrate the founding of our university. As a stunt he and other students went to a bank at Wynyard and staged a mock hold-up. A getaway utility car roared up with a screech of brakes after a "shoot out" on the footpath at Wynyard station. The students raced out of the bank "shooting" and leapt in the car. The police had been tipped off and did not get upset or do anything radical. Passers-by were suitably shocked, and the students had a good time. In those days it was all good, clean fun—and part of the innocence of the age. If one were to try such a stunt today, one would probably be shot at by a passer-by or by a security guard who thought they were doing some good. Even for film shoots of bank robberies, streets have to be blocked off.

There has been a breakdown; the paradigm has shifted. Security guards can now be found on duty in casualty departments—and that was never the case when I first worked in them. It is important that police become involved in the regulation of the security industry. To some extent, we are social engineers, and as such we might wonder about the increased need in our society for security. What factors would make it unnecessary? But be that as it may, a report has recommended regulation and that is what is happening. The ASIAL is very concerned about what it says is a "huge amount of bureaucracy". It has strongly advocated to the crossbench optimal regulation as opposed to maximal regulation.

It is difficult for someone who does not work in the industry to know which of the regulations and stipulations are necessary. The ASIAL is concerned about the requirement that provisionally licensed security officers must work in pairs for a period of a year, given that some companies may not have sufficient paired-work available. Certainly people should be trained and their behaviour checked before they are licensed. I remember one Saturday night driving past the Merchant Court Hotel when it was being built, at the corner of George and Market streets, and seeing a security guard standing on the footpath with a gun in his holster and a beer in his hand. I remember wondering what would happen if someone else who had had a few drinks bumped into that guard at that time. It is important that people in the industry are given appropriate training and that they behave themselves because they are in a very vulnerable position. Often they work alone, and this can lead to boredom and lack of attention after lengthy periods. They could be targeted by people who are alert, well motivated, well armed and presumably more numerous.

The industry does require some degree of regulation and, obviously, any conflict involving guns can put the public at immense risk. This is a good case for regulation. ASIAL believes this bill is too prescriptive. It is very difficult for me to adjudicate on the matter without more research. Obviously, we want to keep criminal elements out of this industry. The security industry does not pay particularly well, and its employees require a relatively low level of training. It is attractive to people who might not have another job, and they could include people who have just been released from gaol. Of course, that is a problem in itself. I do not oppose the bill. I am concerned about industry claims that it has not been consulted and that the Security Industry Council has not met since November. I hope the bill will achieve its objectives.

The Hon. JOHN HATZISTERGOS (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [5.37 p.m.], in reply: I thank honourable members for their contributions to this debate. The bill reinforces earlier reforms introduced by this Government to ensure that the security industry in New South Wales is a professional, high-quality industry. By introducing additional licence categories, the bill will ensure that employees in the security industry have specialist training for the type of activities being undertaken. Under the current system, the classifications within the licence categories cover a very large range of activities. At present, the Act does not recognise that different skills are required to be properly trained to carry out the various kinds of security activities.

For each licence class and category, a minimum level of training will be required. It is expected that for a great many security employees, no further training will be required to enable them to work in the industry. But for those security activities that present a higher risk to the community and require security personnel to possess higher levels of competence and specialised training will be required. These include armed guarding, guarding with dogs or bodyguarding. This reform will ensure that every security employee is equipped with the appropriate level of training and competence to perform the work he or she is undertaking. This is a very positive step for the industry. It will ensure that the training, criminal exclusion, and supervision requirements for the different licence categories are commensurate with the risk to the public that that activity entails. It will make licensing fairer and lessen the impact of a one-size-fits-all system.

Some honourable members have raised concerns on behalf of Mr Terry Murphy from the Australian Security Industry Association Limited [ASIAL] about aspects of the operation of the Security Industry Amendment Bill. In particular the level of consultation with industry, subcontracting requirements, the provisional licensing scheme, and prohibitions on the storage of firearms on "prohibited premises". As honourable members will be aware, this bill is based on the recommendations of a statutory review of the Security Industry Act 1997 and the Security Industry Regulation 1998. The Ministry for Police, which conducted the review on the then Minister's behalf, alled for submissions from interested parties on the operation of the security industry legislation. Letters were sent to key stakeholders, including all members of the Security Industry Council, inviting comments**.**

Submissions were received from a range of stakeholders including the Security Industry Council and ASIAL, and, where appropriate, those comments were incorporated into the review. A copy of the report of the review of the Security Industry Act 1997 and the Security Industry Regulation 1998 was tabled in Parliament on 20 October 2004. At the same time, an electronic copy of the report was provided to all Security Industry Council members.

The review made 30 recommendations for further improvements to the security industry. At the time the report was tabled, the then Minister for Police stated that "those [30] recommendations would be built upon to bring about the next raft of reforms to the industry". No comments on the review of its recommendations were received from any Security Industry Council members, until a consultation meeting was requested by Mr Terry Murphy of ASIAL in late March 2005. In early April 2005, the Parliamentary Secretary to the Minister for Police, the Hon Tony Stewart MP, held a consultation meeting with members of the Security Industry Council to assist in the finalisation of the draft bill.

Council members were again advised that the bill would implement the recommendations of the report. At that meeting, council members were invited to provide written comment on the report of the review. Where possible, those comments and suggested amendments received from the council that could appropriately be incorporated into the terms of the draft bill were adopted. For example, both the National Electrical and Communications Association, and the Master Locksmiths Association of Australasia Ltd [MLAA] argued that the fitness for work recommendation would replicate existing requirements under the Occupational Health and Safety Act. Accordingly, the draft bill was amended to require only that master licence holders have a fitness for work policy that includes references to drug and alcohol matters. Master licence holders would no longer be penalised under the Security Industry Act for not ensuring that employees were medically fit for work.

In addition, the MLAA recommended that the bill provide discretion to the commissioner to exempt persons from the requirement to be licensed to train. This would allow additional training opportunities for New South Wales licensed locksmiths through the Annual Locksmiths Conference and Exhibition. This was a sensible suggestion. As a result of the MLAA's submission, the draft bill was modified and now authorises the commissioner, upon application, to exempt persons engaged in training for class 2 licences from the

requirement to have a licence. The MLAA also requested that the bill exclude locksmiths from the sub-contracting requirements on the basis that the restricted security keying system used by locksmiths necessarily involves a subcontracting relationship. Again, this was a helpful and practical piece of advice. The bill now provides an exemption for persons performing work in connection with a restricted security keying system.

These changes and others were incorporated into the bill, which was not finalised and approved by the Legislative Committee of Cabinet until 23 May 2005. On 25 May 2005 the finalised bill was provided electronically to members of the Security Industry Council for further comment on the proposed reforms. Three submissions were received, and where appropriate, still further changes were made to the bill. ASIAL did not submit any comments on the terms of the draft bill. The MLAA submitted that the sale or cutting of non-restricted keys should be included as "basic household items". This would exempt them from the operation of the legislation. The bill was amended to allow for basic household items to be defined in regulations, which will be developed in consultation with industry. The same approach will be adopted with regard to what will constitute "direct supervision" for the different provisional licence categories, which was an issue raised by the Institute of Security Executives.

There has been no attempt to sneak through security industry legislation. The report of the review, on which the bill is based, has been available to Security Industry Council members since October 2004. In addition, while concerns have been expressed that a formal meeting of the Security Industry Council has not been held in 2005, this is due to the fact that the bill, once enacted, will formalise the council's role in the legislation as the Minister's principal advisory body on the security industry. Once reconstituted, it is expected that the council will embark on a schedule of regular meetings.

The bill will also provide for increased scrutiny over subcontracting within the industry. This will ensure that clients of security services are aware of how the services are being provided and who exactly is providing them. At the consultation meeting chaired by the Parliamentary Secretary for the Minister for Police, the Hon. Tony Stewart MP, the Security Industry Council representatives, including Mr Murphy from the ASIAL, welcomed the report's recommendation to tighten up requirements relating to subcontracting. They commented that they viewed it as a positive and beneficial reform.

Despite this support, it is noted that Mr Murphy has now raised concerns that the requirements relating to subcontracting are unworkable because he claims that they will prevent the provision of services in areas where subcontractors are in scarce supply, that a surge in demand is likely to occur outside of business hours when it will not be possible to secure client consent, and that the requirements will have enforcement implications because if client approval is unable to be obtained in advance the only option will be to refer the matter to the police to respond.

The requirement that subcontracting arrangements be approved by the original client, and all subsequent parties, is an important feature of the bill. It is designed to stamp out unsafe and unsatisfactory practices that have stemmed in part from the lack of transparency in subcontracting arrangements. These practices include: the use of unlicensed security guards; poor training and assessment practices, where demand has put pressure on registered training organisations to process a high number of guards quickly so they can obtain conditional licences; and exploitation of employees in the security industry who are forced to work for less than the award wages.

A contractor should not offer to a client services that the contractor is unable to provide. While it is recognised that demand may exceed supply on some occasions, good commercial practice requires that the client be made aware of the changes to the original contract. If I engage a firm to guard my factory because of its skilled and highly trained work force, unless I approve otherwise, I am entitled to expect that that is who will turn up—not the owner's unlicensed third cousin freshly released from Long Bay. This provision will allow greater scrutiny of any subcontracting arrangements, and ensure greater accountability and transparency. In addition, while it is recognised that the security industry in New South Wales has been called on to provide more and more resources to meet community needs, it must be understood that security guards are not police. The principal function of a security guard is to observe and report. While they have responsibilities to respond to alarms and to secure premises and property, if it appears that a crime has been committed the police should be called to respond.

The introduction of a provisional licensing system will ensure that new entrants to the industry have both the theoretical knowledge and the appropriate level of on-the-job training and supervision. This will be achieved by requiring that new entrants undergo pre-licensing criminal records checks and undertake a pre-licensing course. This course has been developed by TAFE and approved by the Commissioner of Police. These training courses will be provided only by registered training organisations that have been approved by the Vocational Education and Training Accreditation Board. The course will provide new entrants with the critical foundation knowledge necessary to obtain a provisional licence and subsequently a job in the industry.

Once this course has been completed, and a provisional licence issued, new entrants to the industry will be provided with on-the-job training/supervision under the guidance of an appropriately qualified security licensee.

This will ensure that new entrants master the practical skills they will require to carry out their duties effectively and safely. Prior to being eligible for a full licence, a new entrant's on-the-job performance will be assessed in the workplace. This will be via a range of methods including face-to-face assessment from qualified registered training organisations and documentary evidence provided by provisional licence holders and employers.

However, Mr Murphy has expressed some concerns about the operation of the provisional licensing scheme. In particular he claims that it will: reduce the pool of new industry entrants; eliminate apprenticeships and trainees; act as a disincentive for current businesses to expand and new businesses to come into the industry, particular given the requirement for "direct supervision"; dramatically increase wages and flow-on costs; and reduce the level of services provided by the industry. These concerns were initially raised in relation to the proposed prohibition on a provisional class 1F (Armed Guarding) licence. Following consultation with cash-in-transit [CIT] providers, the bill was revised to allow for the issue of a provisional class 1F (Armed Guarding) licence to allow a new entrant to engage in the cash-in-transit sector of the industry, subject to certain training and competency requirements.

As to the provisional licensing scheme more generally, the new system recognises that, regardless of any theoretical training undertaken, a new entrant cannot have the necessary practical skills from day one. Even Judy Hopwood in the other place recognised that the job poses many challenges and it was extremely important to ensure that those who undertake these responsibilities are experienced. On-the-job training under the supervision of a qualified licensee for a specified period will ensure that new entrants to the security industry are appropriately trained to carry out the activities that they are licensed to perform. It is also critical that industry employers accept responsibility for this important task. They must ensure that provisional licensees are adequately supervised, provided with opportunity to work in areas relevant to their licence class, and can demonstrate their knowledge and skills to qualified assessors.

The level of supervision required for provisional licensees will vary depending on the category of activity being undertaken. What constitutes direct supervision will be defined in the regulations following consultation with industry. It is not likely that they will all entail one-to-one supervision. But it is clear that a higher level of supervision will be required for provisional licensees engaged in higher risk activities such as venue control at licensed premises. Responsible security providers are already providing an adequate level of supervision to all their employees, particularly new starters. This requirement should not affect those businesses that are serious about the quality, skill level and safety of their employees, but only those who have shirked this responsibility in the past. The provisional licensing scheme will provide greater protection to employees, and lead to a more highly trained sector.

The bill also introduces a requirement that firearms must not be stored at prohibited premises. Prohibited premises are those premises that are regularly used as the principal or temporary place of residence by a person who has been found guilty of a relevant offence. A relevant offence is a criminal offence that would disqualify that person from holding a licence under the Security Industry Amendment Bill 2005. This means that a person must not keep firearms stored at their home, if that residence is also the principal residence of another person who has a criminal offence relating to the possession or use of a firearm or prohibited weapon. Mr Murphy raised his concerns that an undue burden was placed on the employer that was beyond their control in that the master licence holder risked his livelihood if a firearm authorised to be stored at the residential premises of an employee was discovered to be a prohibited premises; and the onus of responsibility was placed on the security licensee to determine the criminal history of any person who resides or visits the premises where a firearm is stored.

Obviously it would be impossible for the licence holder to scrutinise the criminal histories of casual visitors to the premises where the firearm is stored, for example, in the case of a tradesman who comes to the house to fix the plumbing. But under the proposed provision a person would not be permitted to keep a firearm at home if a spouse, partner, or flatmate who had a relevant conviction also lived there. If a security guard is mad enough to want to share a house with Neddy Smith—should he ever be released from gaol—we are not about to let him keep his gun at home. In the event that a firearm is discovered on prohibited premises, the operator's security licence would be automatically suspended. However, before any action is taken against the master licence holder, the master licence holder will have the opportunity to provide reasons why the master licence should not be revoked.

Under section 29 (1) of the Security Industry Act 1997 a decision to revoke a licence may be reviewed upon application by the Administrative Decisions Tribunal. Concerns also have been raised in relation to the increase in penalties for breaches of the Act. The bill makes it clear that breaches of the Act will not be treated lightly. The penalties, particularly for carrying on a security activity without a licence, have been significantly increased to reflect both the expectations of government and the community. This Government makes no apology for having the highest standards in the Commonwealth with respect to the security industry, or for continuing to strive for improvements. The enactment of the Security Industry Amendment Bill 2005 will play a very valuable role in raising the standard of the security industry in New South Wales even higher. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

NSW Legislative Council Hansard, 23 June 2005, Pages 49 - (article 41)

- Subjects:
  Security Guards; Training; Government Regulation; Firearms
- Speakers:
  Kelly The Hon Tony; Gallacher The Hon Michael; Moyes Reverend The Hon Dr Gordon; Chesterfield-Evans The Hon Dr Arthur; Hatzistergos The Hon John
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